

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DENISE CELESTE MCMILLAN,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 16203-13.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER

This case was on the November 17, 2014 Los Angeles, California trial calendar, but setting up a briefing schedule proved difficult because the court-reporting service did not prepare a complete transcript. (This was a problem not just with the trial in this case but with other proceedings that day.) After the Court tried and failed to have the parties agree on how to fill the gaps, we ordered production of what audio backup existed, listened to it in conjunction with a hard copy of the narrative Ms. McMillan read from during parts of her testimony, and consulted with Ms. McMillan's motion to correct the transcript to make as definitive a transcript as possible. The court-reporting service had also corrected many of the other errors Ms. McMillan pointed out after she notified the reporting service.

At the end of December last year, with the transcript issues seemingly out of the way, we reset the briefing schedule so the case would finally be ready for decision -- and in the order allowed the parties to amend that schedule by stipulation.

Petitioner objects to the revised transcript that this procedure has led to, states that the briefing schedule is "both erroneous and onerous," and has moved to

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recuse the judge who heard the case on the ground that he demonstrated a “bias and an inability to impartially and fairly judge the matter at hand.” She accuses the Court of wanting “the missing parts of the transcript to remain missing” and imposing a “faulty and accelerated briefing schedule [resulting] from the Court’s ill-motivated haste to dispose of this case.”

Both parties in a trial are entitled to an impartial judge, though generally only one party may prevail on each issue presented. “Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *LoCascio v. United States*, 372 F. Supp. 2d 304, 315 (E.D.N.Y. 2005); *see also Liteky v. United States*, 510 U.S. 540, 555 (1994) (“opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible”). The balance of petitioner’s justification and claims offered in support of her motion -- such as that “[i]n recent opinions of this Court, petitioner has been mansplained . . . as an unrealistic, frivolous, objectified female with ‘an affinity’ for dressage who lacks the knowledge of how to run a profitable business enterprise” -- are either untrue or unsubstantiated.

Petitioner is correct that respondent bears the burden of proof for the increased deficiency that he seeks. In the course of getting this case ready for posttrial briefing, however, the Court has come to understand the experience and proficiency in brief writing -- unusual in a *pro se* litigant -- that petitioner possesses on the issues that she raises. *See McMillan v. Commissioner*, 105 T.C.M. (CCH) 1263 (2013) (finding no trade or business in horse activity in which petitioner’s one horse had neither bred nor competed in eight years); *McMillan v. Commissioner*, 109 T.C.M. (CCH) 1559 (2015) (finding no trade or business in horse activity in which petitioner’s one horse had died); *McMillan v. Commissioner*, docket no. 4590-11, 5/9/12 (motion to correct transcript); *McMillan v. Commissioner*, docket no. 3720-12, 5/20/13 (denying petitioner’s motion to disqualify respondent’s counsel for unprofessional conduct), 11/18/13 (denying petitioner’s motion to disqualify judge for unprofessional conduct); *McMillan v. Shadow Ridge at Oak Park Homeowner’s Ass’n*, 165 Cal. App. 4th 960 (2008) (denying petitioner’s motion to disqualify opposing counsel for unprofessional conduct).

The revised briefing order -- which allows petitioner to file the first and last brief -- will remain intact. Petitioner may, as the scheduling order said, stipulate with respondent to a different briefing schedule. She may also move for an

extension of time or even request an extension of time informally by a call to chambers with notice to respondent (which the Court always grants if reasonable).

It is, however,

ORDERED that petitioner's motion for recusal of judge is denied.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
February 2, 2017